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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 265  
134<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by House Families, Aging, and Human Services

**Primary Sponsors:** Reps. G. Manning and Patton

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## SUMMARY

### Family preservation centers

- Requires the Department of Job and Family Services (ODJFS) to certify a children's crisis care facility or residential infant care center (RICC) as a family preservation center (FPC) under requirements imposed by the bill and rules adopted under it.
- Defines an FPC as a children's crisis care facility or an RICC that has as its primary purpose the preservation of families through preteen (individual under 13 years old) foster care diversion practices and programs.
- Requires a certified FPC to meet accreditation and certification standards and operate family preservation programs.

### Residential infant care centers

- Requires ODJFS to certify an RICC under requirements imposed by the bill and rules adopted under it.
- Defines an RICC as a facility that has as its primary purpose the provision of residential services for any infant (child under one year old) affected by addiction and preservation of families through infant foster care diversion practices and programs.
- Provides that an infant is eligible for placement at an RICC if one of the following applies:
  - The infant was born drug exposed and requires additional care.
  - The infant's parent or caretaker requires additional education and support services regarding care for the infant.
  - A public children services agency (PCSA) or private child placing agency (PCPA) requires additional time to determine placement of the infant.

- Imposes requirements regarding infant medical treatment, staffing, infant safe care plan development, the provision of parenting education and family services, and dyad care and rooming-in.
- Permits an RICC that regularly maintains on its premises schedule II controlled substances to (1) maintain firearms at the facility, and (2) permit security personnel to bear firearms while on the facility's grounds.
- Specifies that an RICC does not have to (1) provide toilets or potty chairs, (2) comply with certain ODJFS rules, including, for example, those that regulate use of physical restraint and isolation and disciplinary procedures, and (3) require RICC-employed nurses to comply with ODJFS rules on first aid and cardiopulmonary resuscitation.
- Specifies that the RICC compliance exclusions do not apply on and after the date that ODJFS adopts rules under the bill.
- Permits an RICC to provide residential care to an infant placed by one of the following, having legal custody of the infant, for up to 90 consecutive days: (1) a parent, guardian, or legal custodian or (2) a PCSA or PCPA.

### **Children's crisis care facilities**

- Requires a certified children's crisis care facility to meet specified staff, medical service and space, parental education, transfer, and admissions-privacy requirements.
- Permits a facility to count administrative staff, interns, and volunteers toward required staff ratios in emergency situations and to use volunteers and contracted transportation providers to transport preteens when necessary.
- Repeals the provision permitting a children's crisis care facility that regularly maintains on its premises schedule II controlled substances to (1) maintain firearms at the facility, and (2) permit security personnel to bear firearms while on the facility's grounds.
- Permits a preteen to be placed in a children's crisis care facility for up to 90 consecutive days, rather than, in current law, up to 60 consecutive days, except in certain situations.

### **Sex Offender Registration and Notification Law restriction**

- Prohibits a person who is or has been convicted of or who pleads or pleaded guilty to a sexually oriented offense or child-victim oriented offense from living within 1,000 feet of children's crisis care facility premises or RICC premises.
- Regarding residential premises located within 1,000 feet of children's crisis care facility premises or RICC premises:
  - Specifies that a registered sex offender for a sexually oriented or child-victim oriented criminal offense who resides in or occupies, or any tenant who permits a registered sex offender to occupy, the residential premises, is subject to an action for forcible entry and detainer and rental agreement termination.

- Permits a landlord to bring an action for possession of residential premises if the tenant or occupant is a registered sex offender for a sexually oriented or child-victim oriented criminal offense.
- Prohibits a residential premises' tenant from permitting any person to occupy the residential premises, and authorizes the landlord to evict a tenant that violates the prohibition, if the person is a registered sex offender for a sexually oriented or child-victim oriented criminal offense.

## ODJFS

- Prohibits the ODJFS Director from issuing a compliance waiver for any requirements for children's crisis care facility or FPC certification.
- Provides that the ODJFS Director may suspend or revoke FPC or RICC certification if a center violates or fails to comply with requirements imposed by the bill and by rules adopted under the bill.
- Provides that the ODJFS Director may suspend or revoke a children's crisis care facility certification if the facility violates or fails to comply with the requirements imposed by the bill or by the rules adopted under continuing law.
- Requires ODJFS to adopt rules for (1) FPC certification, not later than 90 days after the bill's effective date, and (2) RICC certification.
- Permits ODJFS to apply for a federal grant under (1) the Family First Preservation Services Act to assist certified children's crisis care facilities and RICCs, under the bill, and (2) the "Child Abuse Prevention and Treatment Act" to assist certified children's crisis care facilities, under continuing law, and RICCs, under the bill.

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## TABLE OF CONTENTS

Overview .....	4
Family preservation centers .....	4
Residential infant care centers .....	5
Certification .....	5
Applied-for RICC certification .....	5
Deemed RICC certification.....	5
Infant placement eligibility.....	6
RICC operational requirements.....	6
Requirements .....	6
Firearm allowance .....	8
Compliance exclusions .....	8
Placement in RICC up to 90 days .....	9
Children's crisis care facilities .....	9

Certification requirements and allowances .....	9
Repeal of firearm allowance .....	11
Residential care length of stay .....	11
Sex Offender Registration and Notification Law restriction.....	12
ODJFS .....	13
Certification responsibilities.....	13
Rule adoption .....	13
Federal grant application .....	13

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## DETAILED ANALYSIS

### Overview

The bill creates a certification for family preservation centers (FPCs) and residential infant care centers (RICCs). Further, a person who holds an active license for a children’s crisis care facility or an RICC may be additionally certified as an FPC. The Department of Job and Family Services (ODJFS) Director must certify the person if the person complies with all FPC or RICC requirements imposed by the bill and by ODJFS rules adopted under it. The bill also (1) amends certain requirements for certified children’s crisis care facilities and (2) restricts registered sex offenders for sexually oriented or child-victim oriented criminal offenses from living within 1,000 feet of children’s crisis care facility premises or RICC premises.

### Family preservation centers

The bill creates a certification for FPCs, defined as a certified children’s crisis care facility or RICC that has as its primary purpose the preservation of families through preteen (under 13 years old)<sup>1</sup> foster care diversion practices and programs. A person who holds an active license to operate a children’s crisis care facility or an RICC may apply to the ODJFS Director to obtain a certificate as an FPC. The Director must certify an FPC if the center complies with all FPC requirements imposed by the bill and by the rules adopted by ODJFS under the bill.

Under the bill, a certified FPC must do all of the following:

- Obtain and maintain accreditation under the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission on Accreditation of Healthcare Organizations, or the Council on Accreditation for Children and Family Services;

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<sup>1</sup> The bill may benefit from a corrective amendment to define “preteen” for purposes of FPCs. It appears to rely on the definition of that term applicable to certified crisis care facilities, which can be family preservation centers. But, because RICCs, which provide services to infants (a child under one year old), can also be FPCs, this use of the term without defining it may cause uncertain application of the FPC provisions. (R.C. 5103.13(A)(4) and 5103.61.)

- Obtain and maintain certification by the Department of Mental Health and Addiction Services;
- Provide family preservation programs informed by evidence-based practices, including all of the following:
  - Family case management;
  - Service referral and linkage;
  - Parent education;
  - Trauma screening and healing-centered interventions.<sup>2</sup>

## Residential infant care centers

### Certification

The bill creates certification as an RICC, defined as a facility that has as its primary purpose the provision of residential services for infants affected by addiction and the preservation of families through infant (a child under one year old) foster care diversion practices and programs.<sup>3</sup>

### Applied-for RICC certification

A person who seeks to operate an RICC after the bill's effective date must apply to the ODJFS Director to obtain a certificate for the facility. The ODJFS Director is required to issue a certificate to such person if the center complies with all the RICC requirements imposed by the bill (see below, "**Infant placement eligibility**" and "**RICC operational requirements**") and, if applicable, those requirements imposed by the rules adopted by ODJFS under the bill (see below "**Rule adoption**").<sup>4</sup>

### Deemed RICC certification

A person who, on the bill's effective date, is operating a children's crisis care facility that has as its primary purpose the provision of residential services for infants affected by addiction and the preservation of families through infant foster care diversion practices and programs, must be deemed an RICC by the ODJFS Director if it meets certain requirements under the bill. The Director must issue to such person a certificate to operate an RICC, if the center is in compliance with (1) all RICC requirements imposed by the bill (see below, "**Infant placement eligibility**" and "**RICC operational requirements**") and (2) all rules governing certification of children's crisis care facilities in effect on the bill's effective date, until ODJFS adopts rules governing certification of RICCs as required under the bill (see below "**Rule adoption**").

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<sup>2</sup> R.C. 5103.61, 5103.611, 5103.612(A), and 5103.614.

<sup>3</sup> R.C. 5103.60.

<sup>4</sup> R.C. 5103.602(A) and 5103.603(A).

Once the ODJFS Director adopts the RICC certification rules, the deemed RICC facility issued a certificate must comply with the new rules rather than the existing children's crisis care facility certification rules.<sup>5</sup>

### **Infant placement eligibility**

The bill provides that an infant is eligible to be placed in an RICC if one of the following applies:<sup>6</sup>

- The infant was born drug exposed and requires additional care.
- The infant's parent or caretaker requires additional education and support services regarding care for the infant.
- A public children services agency (PCSA) or private child placing agency (PCPA) requires additional time to determine placement of the infant.

### **RICC operational requirements**

#### **Requirements**

Under the bill, an RICC must do the following:<sup>7</sup>

- If using medication to treat infants, hold a terminal distributor of dangerous drugs license issued by the State Board of Pharmacy;
- Comply with all ODJFS rules imposing staffing requirements for children's residential centers, group homes, and residential parenting facilities, except those rules for which RICCs are exempted under the bill;<sup>8</sup>
- Develop a plan of safe care, in accordance with the federal "Comprehensive Addiction and Recovery Act of 2016,"<sup>9</sup> for an infant born drug exposed, as follows:
  - Assist with the health and substance use disorder treatment needs of the infant and affected family or caregiver;
  - Develop and implement a program to monitor, support, and connect affected families or caregivers through the provision of and referral to appropriate services for the infant and affected family or caregiver.
- Develop and implement a program for parents and caregivers that, either individually or in a group setting, both:

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<sup>5</sup> R.C. 5103.602(B) and 5103.603(B); see, R.C. 5103.13(H).

<sup>6</sup> R.C. 5103.608.

<sup>7</sup> R.C. 5103.6010.

<sup>8</sup> R.C. 5103.6011; Ohio Administrative Code (O.A.C.) 5101:2-9-02.

<sup>9</sup> "Comprehensive Addiction and Recovery Act of 2016," Pub. L. No. 114-198.

- Teaches parenting skills, bonding, and caring for the infant's special needs; and
- Allows for the program to be completed prior to the infant's discharge.
- Require both of the following:
  - Child-care staff, volunteers, and interns in positions responsible for the daily direct care or supervision of children to be at least 18 years old with a high school diploma or a certificate of high school equivalence;
  - Volunteers and interns who are under age 21 to be supervised.
- Request a criminal records check for volunteers and interns;
- Employ registered nurses, patient care assistants, or licensed professional nurses to meet required child-to-staff ratios;
- Require the center's licensed social worker, licensed independent social worker, licensed professional counselor, or licensed professional clinical counselor to do the following:
  - Provide wraparound services to affected family and caregivers;
  - Coordinate and cooperate with any transferring hospital, PCSA, or PCPA;
  - Refer affected families or caregivers to appropriate services for support and aftercare;
  - Follow up with affected families and caregivers following the infant's discharge.
- Encourage employee-supervised dyad care and permit one of the infant's parents or caregivers to room-in with the infant for bonding and education;
- Regarding dyad care and rooming-in:
  - Provide all of the following:
    - ❖ A single bed and all necessary bed sheets, pillow cases, pillows, and blankets;
    - ❖ All meals and snacks, which must be provided in a designated family kitchen area if the center has such an area;
    - ❖ A minimum of one private shower and toilet for the use of the parents or caregivers who are rooming-in.
  - Notify the parent or caregiver that the RICC's rules and policies must be followed or rooming-in may be restricted or canceled.
- Have one bathing room for every six infants that includes a minimum of one hip level bathtub with hot and cold water, one changing station, and a door with a full-length glass window for safety and observation;
- Meet the child-to-staff ratio of at least one awake child-care staff on duty at all times for every one to five infants;

- Use cribs and other infant sleep products that meet the U.S. Consumer Product Safety Commission’s safety standards for safe sleep;
- Follow the Ohio Department of Health’s Safe Sleep Education Program recommendations.

Additionally, an RICC is prohibited from counting volunteers and interns to meet child-to-staff ratios, except for in emergency situations, including an extremely ill staff member.<sup>10</sup>

### **Firearm allowance**

The bill permits an RICC that regularly maintains on its premises schedule II controlled substances to do both of the following:

- Maintain firearms at the facility;
- Permit security personnel to bear firearms while on the facility’s grounds.<sup>11</sup>

### **Compliance exclusions**

The bill specifies than an RICC cannot be required to do the following:

- Provide toilets or potty chairs for infants;
- Comply with ODJFS rules that regulate the following:
  - Use of physical restraint and isolation of a child by a child care staff;
  - Disciplinary procedures;
  - The provision, acquisition, and control of a child’s personal belongings, including clothing, footwear, and personal toiletry supplies;
  - Instruction on good habits of personal care, hygiene, and grooming;
  - Activities applicable to noninfant children, including assigning a child appropriate daily tasks or work assignments, making school arrangements, encouraging participation in community, school, recreational, and cultural heritage activities, practicing the child’s religious faith, and teaching the child tasks and skills required for life in a community;
  - Provision of foods and meals in accordance with the dietary requirements of noninfant children;
  - Facility dining areas, bathrooms, and certain bedroom requirements, including, for example, regarding same-sex children sleeping arrangements, restrictions on nonambulatory children from sleeping above a building’s entry level, live-in staff bedrooms, and use of bunk beds;

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<sup>10</sup> R.C. 5103.6012.

<sup>11</sup> R.C. 5103.6016.

- Completion of an “ODJFS Medical Statement for Child Care Staff in Residential Facilities” by a specified health care professional within six months prior to employing any person who will have direct contact with children;
- Community engagement plans;
- Private, nonprofit therapeutic wilderness camps.
- Require registered nurses and licensed professional nurses employed by the RICC to comply with ODJFS rules requiring child care staff to possess a current American Red Cross, American Heart Association, or equivalent first aid and cardiopulmonary resuscitation (CPR) certification that is applicable to the age and size of the children able to be served in the facility.

The abovementioned exclusions do not apply on and after the date that ODJFS adopts rules under the bill (see below, “**Rule adoption**”).<sup>12</sup>

### **Placement in RICC up to 90 days**

An RICC may provide residential care to an infant for up to 90 consecutive days if the infant was placed by any of the following with legal custody of the infant:

- A parent, guardian, or legal custodian;
- A PCSA;
- A PCPA.<sup>13</sup>

### **Children’s crisis care facilities**

Under continuing law, a children’s crisis care facility is a facility that provides as its primary purpose residential and other care to one or more preteens either voluntarily placed by a parent or caretaker facing a crisis, or placed by a PCSA or PCPA with legal or permanent custody in an emergency, requiring the placement.<sup>14</sup> Under the bill, a children’s crisis care facility does not include any RICCs, as an entity deemed a RICC can no longer be licensed as a child care facility.<sup>15</sup> Continuing law requires a children’s crisis care facility to be certified by the ODJFS Director in order to operate or hold itself out as such a facility.<sup>16</sup>

### **Certification requirements and allowances**

Under the bill, a certified children’s crisis care facility must do the following:<sup>17</sup>

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<sup>12</sup> R.C. 5103.6011.

<sup>13</sup> R.C. 5103.609.

<sup>14</sup> R.C. 5103.13(A)(1).

<sup>15</sup> R.C. 5103.13(A)(1)(b)(iii).

<sup>16</sup> R.C. 5103.13(B).

<sup>17</sup> R.C. 5103.13(E).

- Employ a licensed social worker, a licensed independent social worker, a licensed professional counselor, or a licensed professional clinical counselor;
- Require, if pediatric medical service is provided at the facility, the following for the provision of pediatric medical service:
  - Medical service to be provided by a qualified, licensed, and insured medical professional;
  - All staff, volunteers, and interns to comply with the privacy requirements of the federal Health Insurance Portability and Accountability Act (HIPAA);
  - If a preteen is admitted by the preteen’s parent or caretaker, and if the preteen requires ongoing medical care following discharge from the facility, a medical professional or licensed social worker to make the medical professional’s or social worker’s best effort to ensure the parent or caretaker is competent to provide the ongoing care;
  - The facility to have a dedicated and private enclosed space for the purpose of a medical professional to receive and treat patients, and that contains a sink or tub, medical exam table, medical record system, and pediatric medical equipment.
- Require, if a preteen is admitted by the preteen’s parent or caretaker, the facility’s licensed social worker, licensed independent social worker, licensed professional counselor, or licensed professional clinical counselor to make their best efforts to ensure the parent or caretaker is competent in the basic parenting skills needed to care for the preteen;
- Require only a transfer summary for the transfer of a preteen from one certified facility location to another, if the facility has more than one location;
- Require the facility to have a dedicated and private enclosed space for completing required admission paperwork and medical forms;
- Require the facility to develop a visitation plan, which must occur during awake hours and not include overnight visits, for the parent or caretaker with the parent’s or caretaker’s preteen while residential care is being provided.

The bill defines “pediatric medical service” as medical service required to be provided by, or with oversight from, a licensed medical professional, including prescribing medication, administering rectal or intravenous medication, and outpatient laboratory service, and providing for sick visits, on-site well child exams, and children assisted by medical technology.<sup>18</sup>

Additionally, the bill permits a facility to do the following:<sup>19</sup>

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<sup>18</sup> R.C. 5103.13(A)(3).

<sup>19</sup> R.C. 5103.13(F).

- Count administrative staff, interns, and volunteers toward required child staff ratios in an emergency situation for up to three hours, if they meet the following requirements:
  - Completed training in the mission of the children’s crisis care facility;
  - Completed training required under ODJFS rules governing staff development and evaluation;<sup>20</sup>
  - Are supervised by facility staff.
- Use volunteers and contracted transportation providers, on whom criminal records checks have been conducted in accordance with Ohio’s criminal background check law, to transport preteens, if necessary for the facility to maintain required child staff ratios.

### Repeal of firearm allowance

The bill repeals the provision permitting a children’s crisis care facility that regularly maintains on its premises schedule II controlled substances to do both of the following:

- Maintain firearms at the facility;
- Permit security personnel to bear firearms while on the facility’s grounds.<sup>21</sup>

### Residential care length of stay

The following table shows the periods of time, under the bill and current law, for which a facility may provide residential care to a preteen, as applicable:<sup>22</sup>

H.B. 265	Current law
Up to 120 days in a calendar year.	Up to 120 days in a calendar year.
Up to 90 consecutive days, which must include the aggregate of days spent at different facility locations if a preteen is transferred.	Up to 60 consecutive days, except: <ul style="list-style-type: none"> <li>▪ If placed by a PCSA or PCPA (in such case it is 14 consecutive days – see below); or</li> <li>▪ If not placed by a PCSA or PCPA and if the preteen’s parent or caretaker has mental or physical health issues or is incarcerated (in such case it is 90 consecutive days – see below).</li> </ul>

<sup>20</sup> O.A.C. 5101:2-9-03.

<sup>21</sup> R.C. 5103.6016.

<sup>22</sup> R.C. 5103.13(D).

H.B. 265	Current law
	Up to 90 consecutive days, if not placed by a PCSA or PCPA and if the preteen's parent or caretaker has mental or physical health issues or is incarcerated.
Up to 14 consecutive days for a PCSA or PCPA placement.	Up to 14 consecutive days for a PCSA or PCPA placement.

## Sex Offender Registration and Notification Law restriction

The bill prohibits a person who is convicted of, was convicted of, pleads guilty to, or pleaded guilty to a sexually oriented offense or a child-victim oriented offense from living within 1,000 feet of children's crisis care facility premises or RICC premises. If an offender violates this prohibition, an owner or lessee of real property that is located within 1,000 feet of those premises, or the local prosecuting authority that has jurisdiction over the place at which the person establishes the residence or occupies the residential premises, has a cause of action for injunctive relief against the person. The plaintiff cannot be required to prove irreparable harm in order to obtain the relief.

Further, under the bill, regarding residential premises located within 1,000 feet of children's crisis care facility premises or RICC premises, the following apply:

- A registered sex offender for a sexually oriented or child-victim oriented criminal offense who resides in or occupies, or any tenant who permits such a registered sex offender to occupy, residential premises located within 1,000 feet of those premises, is subject to an action for forcible entry and detainer and rental agreement termination.
- A landlord is permitted to bring an action for possession of residential premises if the tenant or occupant is a registered sex offender for a sexually oriented or child-victim oriented criminal offense, unless the dwelling unit is occupied by a student tenant.
- Prohibits a residential premises' tenant from permitting any person to occupy the residential premises, and authorizes the landlord to evict a tenant that violates the prohibition, if the person is a registered sex offender for a sexually oriented or child-victim oriented criminal offense.

"Children's crisis care facility premises" means both:

- The parcel of real property on which any children's crisis care facility is situated; and
- Any grounds, play areas, and other facilities of a children's crisis care facility that are regularly used by the children served by the facility.

"Residential infant care center premises" means both:

- The parcel of real property on which any RICC is situated; and

- Any grounds, play areas, and other facilities of a RICC that are regularly used by the children served by the center.<sup>23</sup>

## **ODJFS**

### **Certification responsibilities**

Under the bill, the ODJFS Director cannot issue a waiver to a person for compliance with any of the children's crisis care facility or FPC requirements imposed by the bill and by ODJFS rules adopted under it.<sup>24</sup> The ODJFS Director may suspend or revoke FPC or RICC certification if the FPC or RICC violates or fails to comply with requirements imposed by the bill or the applicable rules.<sup>25</sup> The bill also permits the ODJFS Director to suspend or revoke a children's crisis care facility certification if, in addition to violating the length of residential care and criminal background check prohibitions imposed under continuing law, the facility violates or fails to comply with the requirements imposed by the bill or by rules adopted under continuing law.<sup>26</sup>

### **Rule adoption**

The bill requires the ODJFS Director to adopt rules for (1) FPC certification, no later than 90 days after the bill's effective date, and (2) RICC certification.<sup>27</sup>

### **Federal grant application**

The bill permits ODJFS to apply, for the purpose of assisting certified children's crisis care facilities and RICCs, to the U.S. Secretary of Health and Human Services for a federal grant under the "Family First Prevention Services Act." ODJFS is also permitted to apply, for the purpose of assisting RICCs, under the bill, and children's crisis care facilities, under continuing law, to the U.S. Secretary of Health and Human Services for a federal grant under the "Child Abuse Prevention and Treatment Act."<sup>28</sup>

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<sup>23</sup> R.C. 1923.02, 2950.034, 5321.03, and 5321.051.

<sup>24</sup> R.C. 5103.13(C)(2)(b) and 5103.612(B).

<sup>25</sup> R.C. 5103.6017 and 5103.615.

<sup>26</sup> R.C. 5103.13(G).

<sup>27</sup> R.C. 5103.6018 and 5103.617.

<sup>28</sup> R.C. 5103.131 and 5103.6015; "Family First Prevention Services Act," 42 United States Code (U.S.C.) 50711, 50723, and 50741 and "Child Abuse Prevention and Treatment Act," 42 U.S.C. 5116.

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## HISTORY

Action	Date
Introduced	04-21-21
Reported, H. Families, Aging, and Human Services	06-25-21

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